

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUSTIN MARCUS ZINMAN,

Petitioner,

v.

CALIFORNIA BOARD OF PAROLE  
HEARINGS,

Respondent.

Case No. 1:25-cv-00687-HBK (HC)

ORDER TO ASSIGN DISTRICT JUDGE

FINDINGS AND RECOMMENDATIONS TO  
DISMISS PETITION<sup>1</sup>

FOURTEEN-DAY OBJECTION PERIOD

(Doc. No. 1)

Petitioner Justin Marcus Zinman, a state prisoner proceeding pro se, has pending a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Doc. No. 1, “Petition”). This matter is before the Court for preliminary review. *See* Rules Governing § 2254 Cases, Rule 4; 28 U.S.C. § 2243. Under Rule 4, a district court must dismiss a habeas petition if it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998). Courts have “an active role in summarily disposing of facially defective habeas petitions” under Rule 4. *Ross v. Williams*, 896

<sup>1</sup> This matter was referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302 (E.D. Cal. 2022).

1 F.3d 958, 968 (9th Cir. 2018) (citation omitted). As more fully set forth herein, based on the facts  
2 and governing law, the undersigned recommends that the Petition be dismissed for failure to  
3 exhaust state remedies.

## 4 **I. BACKGROUND**

5 Petitioner initiated this case by filing the instant Petition, which was docketed in the  
6 Central District of California on May 19, 2025 and subsequently transferred to the Eastern  
7 District of California on June 4, 2025. (Doc. Nos. 1, 7). To the extent discernable, the Petition  
8 raises three grounds for relief related to the January 16, 2025 Board of Parole's decision denying  
9 him parole: (1) there was no "reasonable nexus for considering the subject of parole as  
10 dangerous/violent/criminal"; (2) the Board of Parole failed to apply "controlling legal principles";  
11 and (3) California Code of Regulations § 2449.4 and/or § 2449.5 are unconstitutional as applied  
12 under state and federal law. (Doc. No. 1 at 3-5). Included with the Petition is a copy of the  
13 January 16, 2025 Board of Parole decision denying Petitioner parole, a copy of the Ventura  
14 County Superior Court's May 7, 2025 Order denying the state petition for writ of habeas corpus  
15 because it fails to state a prima facie claim for relief, and a "Notice of Appeal" directed to the  
16 Ventura County Superior Court dated May 14, 2025. (Doc. No. 1 at 12-24).

17 On June 25, 2025, the Court ordered Petitioner to show cause why the Petition should not  
18 be dismissed for failure to exhaust state remedies. (Doc. No. 13). On July 17, 2025, Petitioner  
19 responded by asking the Court to excuse exhaustion. (Doc. No. 14).

## 20 **II. APPLICABLE LAW AND ANALYSIS**

21 A petitioner in state custody who wishes to proceed on a federal petition for a writ of  
22 habeas corpus must exhaust state judicial remedies. *See* 28 U.S.C. § 2254(b)(1). Exhaustion is a  
23 "threshold" matter that must be satisfied before the court can consider the merits of each claim.  
24 *Day v. McDonough*, 547 U.S. 198, 205 (2006). The exhaustion doctrine is based on comity and  
25 permits the state court the initial opportunity to resolve any alleged constitutional deprivations.  
26 *See Coleman v. Thompson*, 501 U.S. 722, 731 (1991); *Rose v. Lundy*, 455 U.S. 509, 518 (1982).  
27 To satisfy the exhaustion requirement, petitioner must provide the highest state court with a full  
28 and fair opportunity to consider each claim before presenting it to the federal court. *See*

1 *O’Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999); *Duncan v. Henry*, 513 U.S. 364, 365 (1995).  
 2 The burden of proving exhaustion rests with the petitioner. *Darr v. Burford*, 339 U.S. 200, 218  
 3 (1950) (overruled in part on other grounds by *Fay v. Noia*, 372 U.S. 391 (1963)). A failure to  
 4 exhaust may only be excused where the petitioner shows that “there is an absence of available  
 5 State corrective process” or “circumstances exist that render such process ineffective to protect  
 6 the rights of the applicant.” 28 U.S.C. § 2254(b)(1)(B)(i)-(ii); *see also Hendricks v. Zenon*, 993  
 7 F.2d 664, 672 (9th Cir. 1993) (directing that exhaustion should be excused only “in rare cases  
 8 where exceptional circumstances of peculiar urgency are shown to exist.”); *Ducksworth v.*  
 9 *Serrano*, 454 U.S. 1, 3 (1981) (“An exception is made only if there is no opportunity to obtain  
 10 redress in state court or if the corrective process is so clearly deficient as to render futile any  
 11 effort to obtain relief.”).

12 Here, as noted in the Court’s June 25, 2025 Order to Show Cause, Petitioner indicated he  
 13 filed a petition for habeas corpus in the Fifth Appellate Division of the California Court of  
 14 Appeals with a “date of decision” in 2025 (Case No. F088863). (Doc. No. 1 at 7). The Court  
 15 took judicial notice of the California Courts Appellate Courts Case Information online database  
 16 pursuant to Rule 201 of the Federal Rules of Evidence, which confirms the “completion date” of a  
 17 habeas corpus petition filed in the Fifth Appellate District on January 29, 2025, but does not list  
 18 any habeas corpus petitions filed in the state supreme court in 2025.<sup>2</sup>

19 In response to the Court’s Order to Show Cause, Petitioner does not contend that he  
 20 presented his claims to the California Supreme Court. Rather, Petitioner argues the Court should  
 21 excuse the exhaustion requirement because the State of California “hates him” and has “the  
 22 objective purpose of denying [him] of federally protected rights.” (Doc. No. 14 at 1-2).  
 23 However, Petitioner offers no evidence to support his arguments concerning bias or prejudice  
 24 against him by the “State of California,” nor does he show any lack of opportunity to obtain  
 25 redress in state court or specific deficiencies in the state corrective process. *See Ducksworth*, 454  
 26 U.S. at 3. Thus, the Court finds no grounds to excuse the exhaustion requirement.

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 28 <sup>2</sup> <https://appellatecases.courtinfo.ca.gov/search.cfm?dist=0> (search “Search by Party” for “Justin Marcus Zinman” and “Justin Zinman”).

1 Because it appears Petitioner has failed to exhaust his claims, the undersigned  
 2 recommends that the Court dismiss the Petition for failure to exhaust state remedies. If Petitioner  
 3 presented his claim to the California Supreme Court, he should provide proof of this filing to the  
 4 court in his objections to these findings and recommendations.

### 5 **III. CERTIFICATE OF APPEALABILITY**

6 State prisoners in a habeas corpus action under § 2254 do not have an automatic right to  
 7 appeal a final order. *See* 28 U.S.C. § 2253(c)(1)(A); *Miller-El v. Cockrell*, 537 U.S. 322, 335-36  
 8 (2003). To appeal, a prisoner must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(2);  
 9 *see also* R. Governing Section 2254 Cases 11 (requires a district court to issue or deny a  
 10 certificate of appealability when entering a final order adverse to a petitioner); Ninth Circuit Rule  
 11 22-1(a); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997). Where, as here, the court  
 12 denies habeas relief on procedural grounds without reaching the merits of the underlying  
 13 constitutional claims, the court should issue a certificate of appealability only “if jurists of reason  
 14 would find it debatable whether the petition states a valid claim of the denial of a constitutional  
 15 right and that jurists of reason would find it debatable whether the district court was correct in its  
 16 procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain procedural bar  
 17 is present and the district court is correct to invoke it to dispose of the case, a reasonable jurist  
 18 could not conclude either that the district court erred in dismissing the petition or that the  
 19 petitioner should be allowed to proceed further.” *Id.* Here, reasonable jurists would not find the  
 20 undersigned’s conclusion debatable or conclude that petitioner should proceed further. The  
 21 undersigned therefore recommends that a certificate of appealability not issue.

22 Accordingly, it is **ORDERED**:

23 The clerk of court is directed to assign this case to a district judge for the purposes of  
 24 reviewing these findings and recommendations.

25 It is further **RECOMMENDED**:

- 26 1. The Petition (Doc. No. 1) be DISMISSED for failure to exhaust state remedies.
- 27 2. Petitioner be denied a certificate of appealability.

**NOTICE TO PARTIES**

These Findings and Recommendations will be submitted to the United States District Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days after being served with a copy of these Findings and Recommendations, a party may file written objections with the Court. *Id.*; Local Rule 304(b). The document should be captioned, “Objections to Magistrate Judge’s Findings and Recommendations” and shall not exceed **fifteen (15) pages**. The Court will not consider exhibits attached to the Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the exhibit in the record by its CM/ECF document and page number, when possible, or otherwise reference the exhibit with specificity. Any pages filed in excess of the fifteen (15) page limitation may be disregarded by the District Judge when reviewing these Findings and Recommendations under 28 U.S.C. § 636(b)(1)(C). A party’s failure to file any objections within the specified time may result in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

Dated: July 21, 2025

  
HELENA M. BARCH-KUCHTA  
UNITED STATES MAGISTRATE JUDGE